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ABSTRACT

The pamphlet is one issue of the PROBE series which gives British secondary school youth an overview of social issues and suggests questions for discussion. Information and issues about law and justice in England and Wales are discussed in this issue. Section one explains the differences between criminal law, which is enforced by the police, and civil law, which is enforced by the courts. Section two reviews sources of law, including traditional legal books, court decisions, legislation, and citizens' votes. Section three explores the role of Parliament in making legislation which influences daily lives. Areas such as seat belt regulations, drinking age limits, and minimum age for leaving school are studied. Law in industrial relations is concerned with issues of the power of trade union organizations and worker representation on boards of directors. In areas of personal justice, the law is concerned with male/female equality, racial equality, and homosexual rights. Section four reviews areas in which the legal system needs reform: the penal system, the legal profession, and making the law comprehensible to the average citizen. (AV)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

Law and Society. CEM Probe, May 1977.

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probe

Law & Society

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Law and Society

This "Probe" looks at some of the issues affecting the Law, particularly in England and Wales. The general questions are equally applicable to Scotland, but Scots Law has evolved from a quite different system, based on Roman Law. Over the years the two systems have drawn closer together, but particularly in the pattern of the Courts, and procedure, there are considerable differences. It is not possible in a booklet of this length to deal adequately with the position in Scotland beyond this general warning that it may be different in a number of details.

Underlying the whole question of the Law itself, is the more fundamental issue of the distinction between Law and Justice. There is the old story of the London taxi driver asked to go to the Royal Courts of Justice. He looked puzzled and then said "Oh you mean the Law Courts". Lawyers sometimes say they are not concerned with justice, only with the law. Is this a cynical or a necessary view of the position?

Basically, the law can be described as the pattern of rules devised to enable society to work without unnecessary friction; and to "hold the ring" by defining behaviour which is so anti-social that society must take steps to stop such behaviour - this applies particularly to the Criminal Law.

The booklet assumes the existence of a specialised group of "lawyers". In the complexities of modern society some say the Law inevitably is complicated, especially with increasing intervention by Governments of all political persuasions; so it is necessary to have a specialised group of people administering and interpreting the Law. Others point to some which have tried to dispense with a legal profession as we understand it or to minimise its place in the community. The general view would be that, with the way the law increasingly affects many aspects of ordinary life for each one of us every day, there is an increasing need for legal help and advice generally, and it is essential that all citizens have ready access to legal services.

As against this St. Paul had scathing words for Christians who went to litigation (1 Corinthians 6.1-8); and in St. Luke's Gospel occur the words:

"Alas for you lawyers, you have taken away the keys of knowledge. You did not go in yourselves, and those who were on their way in you stopped". (11.52).

In an attempt to deal with the subject reasonably intelligibly and concisely, little has been said about the amount of Law dealt with outside the Courts system. There are a bewildering variety of Tribunals dealing with specific topics, particularly within the general field of the Welfare State. The supervision of such bodies by the Courts is limited, although the Courts have attempted to enforce the concepts of natural justice.

1 What is 'the Law' ?

Mr. Brown and Mr. Smith are having an argument over their garden fence; it has been broken for some time and Smith says it is Brown's responsibility to have it repaired. As Mr. Brown continues to do nothing, Mr. Smith says "I'll have the law on you".

In Notting Hill, London, a race riot takes place with young black kids fighting the Police; while in Manchester, United and City fans confront the Police in after-match violence. "The Law" in action.

(1) What is the first thing that comes to mind when someone says "The Law"?
(2) What does "The Law" mean to us if we think about it a while?

The main exposure of the law on television is in action packed police serials, where the heroic cops usually catch their prey (normally murderers or thieves); the other main legal element on television being the courtroom dramas. The combination of these two types of programme may give the idea that the main people involved in the operation of the law are exciting cops and tedious, archaic men who wear ridiculous headwear in court. Do many people have this image? If not, from where does an alternative image come?

Just as it could be said that the police have many more mundane crimes to solve than are seen on T.V. serials, so also is the task of dealing with criminals more extensive than at first glance. Preparing a case against a criminal can be a lengthy procedure as can the court procedure that may follow. Indeed many problems result through delays in giving someone a trial; there are numerous criticisms made of the system through the time taken over trials.

There are also many criticisms of the general way the police work, a fact which is disturbing since the maintenance of law and order depends greatly on a good public image of the police. As the volume of crime increases, without a growing police force, the pressures continue to mount on individual policemen. Their job is not an easy one but that does not mean they can be excused from all criticism. Indeed it is accepted that the police do sometimes make mistakes, and thus there is a disciplinary system - which, for the first time, recently introduced a non-police element into the process of police discipline.

Many argue that the police have too many responsibilities within

11.50 New Series
Police Surgeon

SAM GROOM in
A Ticket to Nowhere
guest Ed Nelson

A diamond smuggling seaman finds himself hunted by Police Surgeon Simon Locke as a possible cholera carrier.

Dr. Simon Locke	Sam Groom
Lieut. Jack Gordon	Larry D. Mann
Max	Ed Nelson
Wilma	Teddy Moore

9.0 Starsky and Hutch

Tough and rough – but likeable and friendly. Two young cops walk a tightrope in the world of crime.

starring
Paul Michael Glaser as Starsky
David Soul as Hutch

9.0 Charlie's Angels

KATE JACKSON
FARRAH FAWCETT-MAJORS
JACLYN SMITH in

Lady Killer

Glamorous girl detectives, Sabrina, Jill and Kelly—*Charlie's Angels*—investigate the murder of two beautiful women, whose pictures were to have appeared in the centre pages of *Feline* magazine.

Are their deaths part of a plot to ruin the publishing empire of Tony Mann? To find out, Jill sets herself up as the next *Feline* pin-up — and potential victim.

Sabrina	Kate Jackson
Jill	Farrah Fawcett-Majors
Kelly	Jaclyn Smith
Bosley	David Doyle
Tony Mann	Hugh O'Brian
Nancy	Jan Shutan
Paul Erhard	Alan Fudge
Victor Burrell	Bob Basso
	Martha Smith

9.20 Serpico

starring
David Birney
as Frank Serpico
the undercover cop who campaigns against crime and corruption both on the city streets – and *inside* New York's Police Department.
with
Tom Atkins
as Lieutenant Sullivan
Trumpet of Time
Serpico finds out the hard way just how difficult it is to remain an honest cop . . .

10.30 Baretta

ROBERT BLAKE in
The Blood Bond

While working undercover as a laundrywoman, Baretta sees lawyer Jesse Bryant being robbed of an envelope containing 100,000 dollars belonging to suspected underworld leader Mr. Nicholas. After a chase, Baretta gets the envelope back and turns it in at a police station.

But Nicholas then accuses Baretta of stealing half-a-million dollars that was also supposed to have been in the envelope—and Billy Truman is kidnapped.

Baretta	Robert Blake
Lt. Brubaker	Edward Grover
Billy Truman	Tom Ewell
Rooster	Michael D. Roberts
Nicholas	Tito Vandis
Jesse	David Huffman
Penelope	Dar

9.25 The Monday Film: Cotton Comes to Harlem

starring **Godfrey Cambridge**
Raymond St Jacques
Calvin Lockhart

Harlem detectives 'Grave Digger' Jones and 'Coffin Ed' Johnson suspect that the 'Back-to-Africa' campaign organised by Rev Deke O'Malley is a swindle, and when a large sum of subscribers' money disappears . . .

Jones	GODFREY CAMBRIDGE
Johnson	RAYMOND ST JACQUES
Rev Deke O'Malley	CALVIN LOCKHART
Iris	JUDY PACE
Uncle Bud	REDD FOXX
Capt Bryce	JOHN ANDERSON
Mabel	EMILY YANCY
Calhoun	J. D. CANNON
Billie	MABEL ROBINSON
Jarema	DICK SABOL
Barry	THEODORE WILSON
Anderson	EUGENE ROCHE

Director of ... *films: page 9*

11.20 Harry O

starring
David Janssen as Harry Orwell
with **Anthony Zerbe**
as Lieutenant Trench
The Madonna Legacy
Everyone thinks that 'down and almost out' ex-cop Frank MacDonald has committed suicide – everyone, that is, except Harry Orwell, who leaves no stones unturned to uncover some very unsavoury goings-on.

Sgt Roberts	PAUL TULLEY
Karen Nesbitt	CHRISTINE BELFORD
Walter Nesbitt	JOHN COLICOS
Jonathan Nesbitt	DENNIS REDFIELD
Stella Christian	GWEN ARNER
Jean MacDonald	PHYLLIS LOVE
Bill Henderson	CHARLES SHULL
Joanna Costello	DORIA COOK
Barney Hamilton	JACK RILEY
Jennie	SABRINA SCKARF
Angela Thomas	CAROL BAGD...

8.0 The Streets of San Francisco

KARL MALDEN
MICHAEL DOUGLAS
PETER STRAUSS in

Letters from the Grave
with WILLIAM WINDOM

During a tour of abandoned prison cells in Alcatraz, visitors are shocked when a wall gives way to reveal the skeleton of a man murdered 20 years earlier.

Mike Stone and Steve Keller examine the skeleton and start investigations . . .

Mike Stone	Karl Malden
Steve Keller	Michael Douglas
Lew Kovic, Jnr.	Peter Strauss
Nick Lugo	Paul Stewart
Jon Kovic	William Wind...

1.25 Hawaii Five-O

JACK LORD in
Elegy in a Rain Forest

A convicted killer escapes from police custody and abducts the daughter of the island's District Attorney. McGarrett offers to trade his life for the girl's.

McGarrett	Jack Lord
Danny Williams	James MacArthur
Duke	Herman Wedemeyer
Marcus Lucien	William Watson
David	Edward Gallardo
	Glen Cannon

8.10 Kojak

starring **Telly Savalas**
as Police Lieutenant Theo Kojak – a tough cop with a tough job in a tough town – New York.

the field of the criminal law - with many duties beyond the prevention and detection of crime. In Magistrates Courts, which operate in England and Wales and deal with 98% of all criminal cases, the police often have a multiple role to play: that of administration, prosecution and witness. It has been argued that this puts an unfair burden of work on the police (keeping them from their "real job") and is also bad for the cause of justice. Both problems could, perhaps, be solved if the police were simply responsible for catching suspected criminals and left the task of prosecution to an independent body. It is interesting to make a comparison with the Scottish prosecution system here, which operates very much as suggested; the independent prosecuting body being the Procurator Fiscal (the job of Sutherland in the television programme "Sutherland's Law").

(1) What is the basic job of our police forces at present?
(2) Do they do that job adequately?
(3) What do you think the basic job of the police should be?
(4) Do the police discriminate unfairly against certain people?
(5) Are there ways in which, from either side, the relationship between the police and the public could be improved?

"The Law" is seen to cover an even wider area when it is realised that police are only really involved with one branch of the law - i.e. criminal law. This is concerned with wrongful acts which affect the community at large; the other major branch - civil law - is concerned with disputes between one individual (or organisation) and another which affects only themselves. The criminal may be punished in various ways, including imprisonment, but the civil wrongdoer normally has to provide compensation (a sum of money) to the person wronged.

There is a separate set of courts to deal with civil law (just to complicate matters!) although in most civil disputes the matter is usually settled without court action. The court structure is quite complex but the criminal side, very briefly, begins with magistrates courts (of which there are about 1,000 in England and Wales) and Crown Courts (far fewer, and which deal with more serious cases), and then courts to which you can make an appeal - the High Court, the Court of Appeal and the House of Lords. The civil side consists of the County Courts, the High Court, (which is more extensively used in civil cases) and the other two appeal courts.

(1) "Law is a central concept in human society: without it indeed, there would be no society". Do you agree?
(2) If you imagine a basic, primitive, human society, can you see circumstances in which some basic laws are necessary for the well-being of that society? If you were setting up a small community on an uninhabited island; what laws, if any, would you need there?
(3) What differences do you think there are between rules (as in the rules of football) and laws (those which the police aim to enforce)?

2 Where does 'the Law' come from?

If, in an effort to understand the law more clearly, you want to find some official collection of the laws relating to a particular aspect of life, you will be unlucky. The laws of England and Wales are not conveniently parcelled into an easily understandable system; they are (in general) spread about in bits and pieces throughout our legal books. The law is found in two forms - the legislation passed by Parliament over the years, and the common law which is judge-made law.

The decisions made in court by judges, bind the decisions of judges in the same or lower courts, in cases of a similar kind in future. Only recently has the supreme law Court, the House of Lords, been able to reverse its previous decisions. Thus judges both interpret written legislation (sometimes a very flexible interpretation) and make new law themselves by deciding cases where the essential facts are previously untried. If the case which is an "authority" on the subject has an apparently unjust conclusion, nothing can be done to decide against that authority unless a higher court is prepared to do so.

(1) Since there is no logical collection of "the law" does that make lawyers necessary when perhaps they should not be?
(2) Is the law naturally 'behind-the-times', because of the effect that decisions made years ago have on those made today?
(3) Does this system, of the mixture of legislation and common law, seem to you a good one? What problems might it create? Is there any practical alternative?

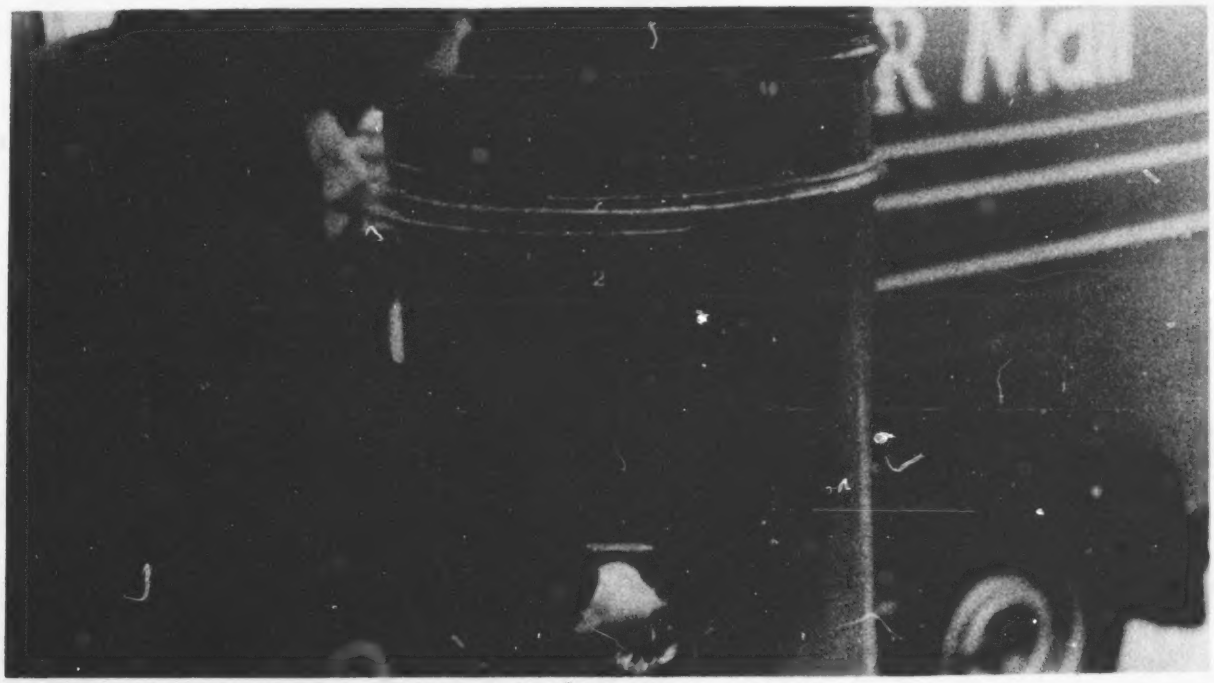
Legislation (i.e. the "written law") is composed of over 3,000 Acts of Parliament (which are passed by the House of Commons and the Lords, and approved by the Monarch) and several thousand statutory instruments (which are rules made by a Minister, bye-laws of a local government and other authorities with power from Parliament). Therefore on the one hand the judges are a source of the law, and on the other the law comes from the Parliament, government ministers and their departments, and even (to a limited extent) from local authorities. Clearly a very complicated structure but, one would hope, also a democratic one.

It is democratic in that MPs are elected by the people, as are local government councillors, but judges are not elected - they are appointed (from the legal profession - see later). Many would say that as the political colour of Parliament changes so much, and so often, it is very important to have an independent, stable element in the law making process. Judges need to be legally qualified

anyway, so perhaps it is right that they make up this element. No-one would argue that we should elect those who simply interpret the law as written, the problems arise over how much our judges do actually change our law. Many say that since they are predominately from the upper class and upper-middle class, they should not have this power. (Perhaps the fault really lies in the opportunities for entry into the legal profession - see later).

It could also be said that the law making process is not democratic because civil servants are responsible for drawing up (most of) the legislation that Parliament passes and for the subsidiary legislation made under Acts of Parliament; and with such a heavy programme MP's individually, and Parliament as a whole, cannot devote enough time to looking at the Bills in detail. Some would say that Parliament has lost any effective control at all, over legislation or over the Government.

One of the issues in the head on collision between the Attorney General and the Court of Appeal over the Post Office Unions' attempted boycott of postal services to South Africa in January 1977 was how far the Court was declaring existing law, and how far it was making new law. The Attorney General's consent was needed before a private individual could apply for an injunction to stop the proposed action of the Union. Was he answerable to the Courts for the way he exercised his discretion to give or withhold that consent? The Times leading article of 22.1.77 said "no member of the government, even one possessing the hybrid character of a law officer of the Crown should be allowed to stand, proof against challenge, between the citizen and the courts."



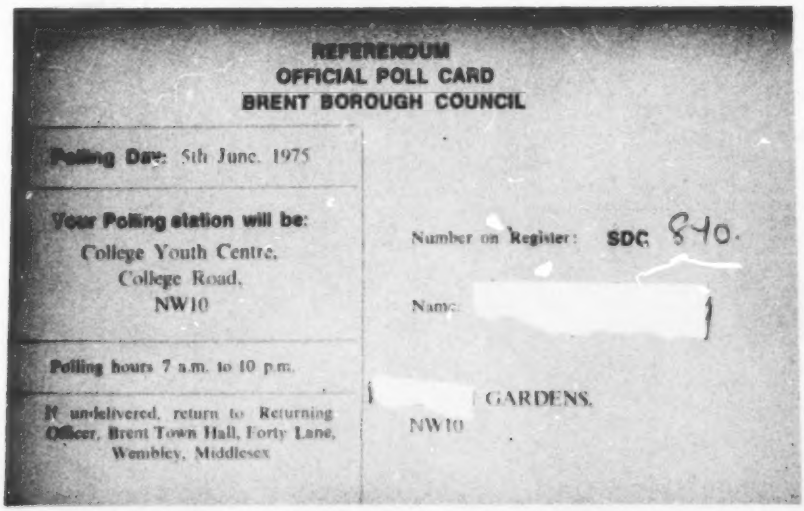
(1) What is democracy?
(2) Do we have democracy in this country?
(3) What does democracy mean to each individual - is it anything more than casting a vote at election time?

The right of each person to a vote has long been one of the pillars of our constitution, and it does provide the public with some means of affecting the way the country is run, but many doubt if it is enough on its own. Many people seek other ways of influencing the decisions made about our future (as individuals and as a country) e.g. through active participation in political parties, pressure groups, trade unions and employers' organisations.

(1) Does the average person have much of a say in the making of the laws that will affect him?
(2) Should there be more participation and, if so, how?
(3) Should there be more referendums in Britain, as in 1975, on the EEC, for example - on capital punishment or devolution?

Some schools have school committees, made up of some staff and some pupils, to share with the headteacher some of the decision making. This is a good opportunity for members of the school to have some involvement in, for example, changes in the school rules. If the representatives of the school are elected by their forms it should be a democratic body.

What comparison, if any, can be usefully made between:-
(1) A school where the Head does not have any consultation with the pupils, and a dictatorship;
(2) A school where a democratic school committee operates, and a democratic system like in Britain;
(3) A referendum of the people, and a vote by all the pupils in a school?



REFERENDUM
OFFICIAL POLL CARD
BRENT BOROUGH COUNCIL

Polling Day: 5th June, 1975

Your Polling station will be:
College Youth Centre,
College Road,
NW10

Polling hours 7 a.m. to 10 p.m.

If undelivered, return to Returning Officer, Brent Town Hall, Forty Lane, Wembley, Middlesex

Number on Register: SDC 840.

Name: [redacted]

[redacted] GARDENS,
NW10

3 The extent of 'the Law'

1 The General Picture

Every day the law is being extended by the passing of increasing numbers of Acts of Parliament. From a relatively gentle flow in the 19th Century, new legislation has grown, through the 20th Century, to an ever larger flood. The flood really started in the early 20th Century with the recognition of the need to improve social conditions in Britain and create a fairer, more equal society.

The Victorian era was dominated by the image of the propertied class and the working class - an image which badly needed changing. Gradually the old class barriers were attacked as a large programme of new legislation brought in the Welfare State. With the help of post-war prosperity, living standards of the majority of the population improved, and the differences between rich and poor were greatly reduced. Britain in the 19th Century would have been described as a capitalist country (with the working classes dominated by the property classes); by the 1950's it was very much a social-democratic one (with a much wider spread of power throughout the upper, middle and working classes; and a much fairer distribution of income).

As a result of the substantial discipline needed over the lives of the general public during the 2nd World War, the scope of Parliament's responsibilities over the country and its people widened yet further. There was a greater control on individual freedom than ever before, but rather than contracting during the 1950's it expanded yet further.

Parliament is the supreme legislative body in this country and thus has the power to extend its control over the country as much as it likes. The Central Government answerable to Parliament is responsible for spending about half the country's income and employs about a third of its workforce. It has recently made great changes to school life (see later) and working life (see later, "industrial relations" and "equality of sexes"). It could be argued that these are political questions - rather than legal ones - but isn't the law concerned with human freedom?

(1) With the growing tide of new legislation, many are anxious about the strains on MPs and the resultant quality of legislation produced. Is Parliament able to devote enough time to each new Act when such an output is involved?

(2) If Britain has developed from a "capitalist" to a "social-democratic" country, will further legislation and intervention by Parliament lead eventually to a "socialist/totalitarian" state (i.e. with no private industry, complete control from a central bureaucracy and only one official party)?

(3) What sort of society do we want - one with a fine balance between individual freedom and control by Parliament: or a centralised society with less individual freedom?
(4) Is it possible to have greater equality without a loss of freedom - and, if not, how far do we want to sacrifice freedom for the sake of equality?
(5) How far can you pass Acts of Parliament to make people equal?

2 Some specific examples

It is perhaps easy to become lost in a sea of generalization and so it is very important to look at specific examples. Thus, in looking at how far Parliament intrudes into our lives, let us look at some examples:-

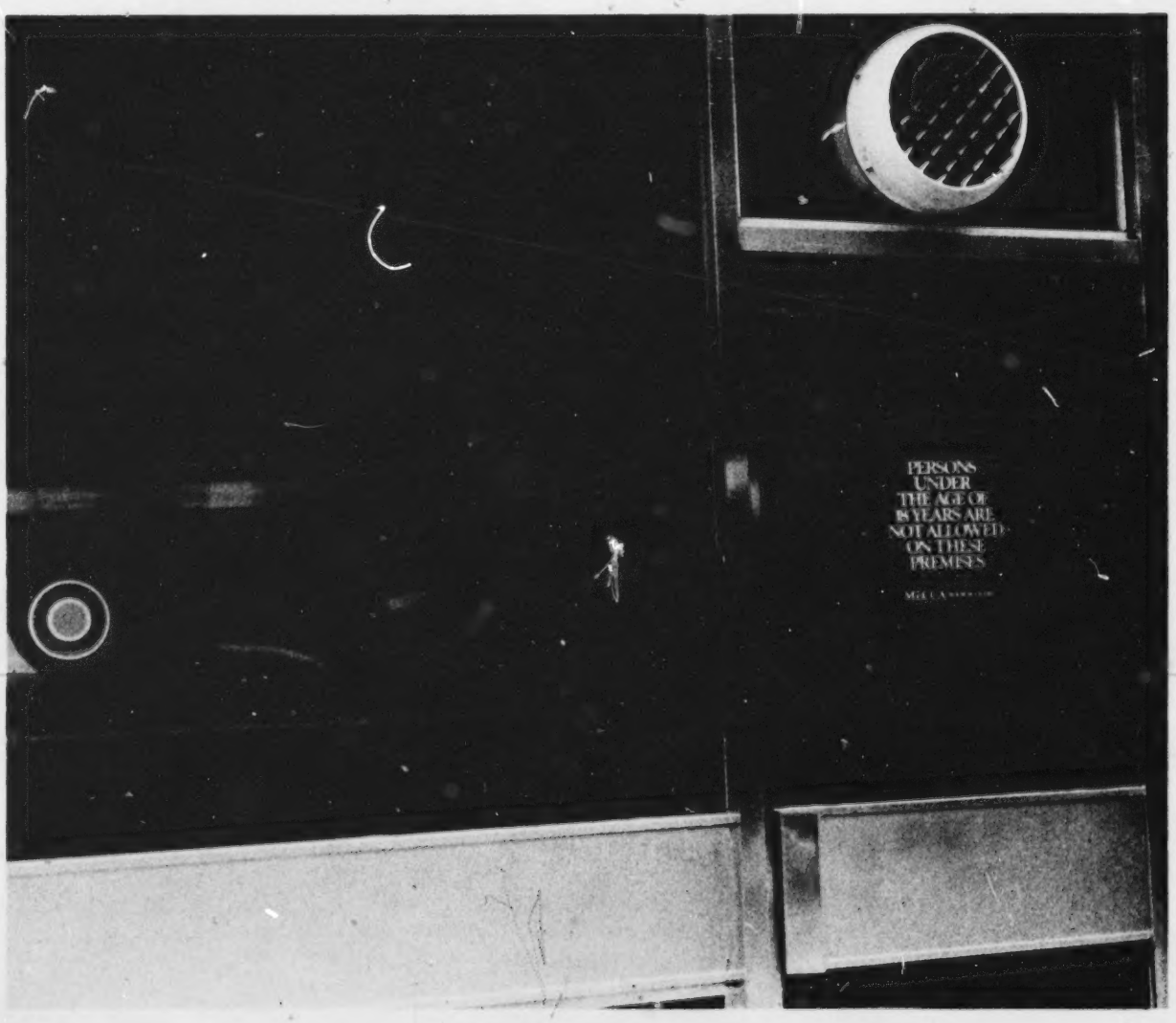
Wearing Seat Belts in cars, and crash helmets on motor bikes

In 1975 the wearing of crash helmets on motor bikes was made compulsory. In the same year, the law said that seat belts must be fitted in all cars. It was also being debated as to whether people should be forced by law to actually wear the seat belts.

Is this concern with the safety of the road users too great a restriction of personal freedom? (What about exceptions, like Sikhs who do not have to wear helmets because of their turbans?) Is it only a personal matter when the cost to the community of dealing with accidents is so very great? Would it be fair to add a certain sum to all motor insurances to help finance the National Health's treatment of accident victims (i.e. should these medical services be financed by car drivers, or by tax payers in general)?

Under age drinking in pubs worries many people (including many publicans), and there is a related problem of the accessibility of alcoholic drink in supermarkets. Widely differing development rates during the 'teens' make the task of identifying those under 18 very difficult. In the U.S.A. a system operates where all young people carry identification cards which they show (when requested) in buying alcoholic drink or entering a disco club selling alcohol.

Should a system of I.D. cards be introduced in Britain, or would that be too great a restriction on personal freedom? Should there be, indeed, any serious attempt to enforce the laws on drinking ages? There is, perhaps, a moral dilemma: should human freedom include the freedom to develop a drinking problem, even to become an alcoholic or should that freedom be restricted by law?



The holding of free pop concerts has caused much controversy with the local inhabitants affected. Many say it is a conflict between the freedom of those attending the concerts and the protection of society (in the noise, mess and other problems caused for the locals). Is it within the justifiable range of the law for Parliament to restrict (or even ban) such concerts?

The minimum age of leaving school was relatively recently raised from 15 to 16. Among the arguments in favour of this change was the idea that more education is good for everyone, that more children would therefore take (and pass) exams, and that it would reduce the numbers of school leavers unable to find jobs. There were, however, many complaints - particularly from staff faced with the task of teaching a greater number of unwilling pupils, from the pupils themselves who wanted to be out earning money, and from the parents who badly needed the extra income.

Is it fair to make 15 year olds remain at school an extra year against their wishes? Is Parliament in this case intruding too much, or does society (through Parliament) have a responsibility for educating people to a certain standard? Should attendance at school be compulsory at any age?

Comprehensive Education:- Why abolish Grammar Schools and Direct Grant Schools, you may ask, if raising education standards was the priority? Whether or not Grammar Schools give a better education than Comprehensives is debatable; what is clearer is that political motivation (rather than academic concerns) forced Grammar Schools to close. There is a seeming paradox in that some of Britain's finest schools - which were direct grant - have now become more socially divisive than ever. The bright children from a humble background, who once could earn a scholarship to a direct grant school, cannot hope to pay the huge fees these schools (now mostly independent) are forced to charge.

Is it right that all but the richest should be forced to go to the same school, with no opportunity to work their way into a higher academic environment? Should fee paying schools be abolished altogether, or would that be too great a restriction of personal freedom?

3 Industrial Relations

One of the most controversial examples of the extent of the law (and the extent of Parliamentary control of individual lives) is found in the field of industrial relations. A man's work is obviously a very important part of his life and the freedom he has (or does not have) is also very important to him. In times

past the individual worker was very much at the mercy of the employer, who could dismiss him arbitrarily without compensation. The growth of trade unions to protect employees by collective action has been important for the social health of the country as a whole.

While recognising the problem created by the increasing size and power of commercial organisations on the employers' side, concern has been expressed about the greatly increased size and power of trade union organisations. A Conservative Government of 1970/74 introduced the Industrial Relations Act, repealed when the Labour Government returned to office in 1974. Because of the very widespread refusal to accept that this Act of Parliament was properly part of the law, and could therefore be ignored, the Industrial Relations Court which was set up under the Act became the centre of considerable controversy. Recent trade union and labour relations legislation is creating the concept of proprietary right in a job.

Another important and controversial aspect of this whole field, especially in the light of the recent Bullock Report, is the question of worker representation on boards of directors. Is this correctly described as industrial democracy? In political matters democracy meets with approval. Should effective worker participation in management be seen as an extension of democracy in the industrial field?

(1) How far should union members acting in industrial disputes be subject to control by ordinary processes of law?
(2) Should Parliament give trade unions legal authority to create "closed shops" (i.e. a system whereby only union members can do certain jobs) and thus force some people either to join the union or lose their jobs?
(3) If closed shops are to be enforced can there be any exceptions? e.g. for the press; if newspapers were only able to print articles by members of the journalists' union, would this be an end to "press freedom" with the paper in the hands of the union?
(4) We are concerned with the freedom of the individual against the freedom of the large organisation (large companies, government departments and local authorities as well as trade unions). Is it not right to restrain the large organisation so as to protect the individual?
(5) Can you think of other examples where the individual confronts a large organisation? In these examples is there justice, or not?

4 Personal Justice

How far can you pass Acts of Parliament to make people equal? This question was asked earlier on, now we look at it more fully.

Throughout history one of the major areas of debate on equality has been over incomes and wealth. In every generation there have been active campaigners for a greater equality of incomes and a fairer distribution of wealth, and the Twentieth Century has witnessed great advances in this respect. The distribution of income in Britain is now fairer (i.e. more just) than ever before; how much more distribution there should be is a matter of politics. But where do you draw the line between law and politics?

Judith Shklar (Professor of Politics at Harvard) once said:-

"Politics is regarded not only as something apart from the law but as inferior to law. Law aims at justice, while politics looks only to expediency. The former is neutral and objective, the latter is the uncontrolled child of competing interests and ideologies".

Can the law "aim at justice", and can it be "neutral and objective"? How do you define justice? If the law is seeking justice, does that mean a just interpretation of the law as it stands, or should lawyers be looking for areas of injustice in the law which might need changing?

When considering individual freedom, it is important to bear in mind that a government sometimes has to intervene through legislation to protect groups of people who would otherwise be disadvantaged, e.g. legislation to protect employees, tenants and consumers. Government intervention need not always mean a curtailment of true freedom - it may increase that.

Whatever may be the answers to these questions, by looking at a few areas where personal justice is involved, we will see that the law has an essential role in the search for that justice. These areas are very sensitive with a large number of people and all have come to the surface particularly in the 1960's and 1970's.

Male/Female Equality

In 1975 two Acts came into force - the Equal Pay Act and the Sex Discrimination Act - which sought to enforce, as far as possible, the equality of the sexes; mainly in the area of employment, but also in certain other fields. They made it illegal to discriminate in supplying goods and services of various kinds. It was thought that the situation was unjust and needing a radical change and so, although general public opinion was not unanimous on the issue, the law was changed. Although it is too early to see any real effects

of these Acts, it could be said that they will only be really effective when public opinion moves to a general acceptance of the principle of equality of the sexes.

(1) Is a law only effective if the majority of people accept it?
(2) Do you agree with these Acts? Do they go too far or not far enough?
(3) Apart from employment, in what other areas of life are people unfairly discriminated against due to their sex?

Racial Equality

This is a much more complicated issue since it involves the whole subject of immigration. The problem is therefore in two parts: (i) is our immigration policy right? and (ii) do we treat people of different races fairly when settled in this country? There are, of course, many misunderstandings here, since 'immigrants' include a number of white people (Americans, Canadians, Australians, Europeans etc.) as well as coloureds; and many coloured people were born here and know no other home. White immigrants can mingle into society largely un-noticed, and anyway cause little concern, (though there is a special problem here about one group of white immigrants, the Irish population) whereas coloured people suffer a large amount of discrimination.

What can the law do to correct this injustice? There have been two Race Relations Acts, in 1965 and 1968, which have made it illegal to discriminate against someone on the basis of colour, race or ethnic or national origin, in terms of denying them various goods or services (including education); or discriminating against them in employment, membership of trade unions or provision of housing. It has also been made an offence to 'incite racial hatred' by what you do or say. In other words there are widely stretching situations in which someone can be prosecuted for racial discrimination - but how effectively are these measures enforced?

The Acts set up the Race Relations Board and the Community Relations Commission, merged into the Commission for Racial Equality by the 1976 Act, to look into particular racial problems and deal with complaints, and to work positively to improving community relations in specific areas. Again, though, the problem is that these Acts will only be effective if public attitudes on race improve. Perhaps one of the most difficult tasks of the legal system is enforcing unpopular (but necessary) legislation. As the Commission for Racial Equality takes up its work the degree of its success will be reported in many newspapers.

(1) Do you think attitudes to race are improving in this country, or not?
(2) Do you think that legislation about race relations is necessary and, if so how could it be enforced in the present climate of opinion?
(3) Should the law prosecute politicians or other public figures who make speeches of a racialist nature (i.e. speeches which incite racial hatred)?

Homosexuality

There has been in the past (and still is today) a great misunderstanding of homosexuals. Many thought them to be sick people who needed medical attention, others that they were perverted maniacs; many shied away from them and brought up their children to hate the thought of homosexuality, and the law deemed it criminal for a man to participate in homosexual acts. Until the law was changed in 1967, it was a criminal offence for two consenting adult males to practice homosexual acts in private; although the law was inconsistent, since it never was illegal for women. It is still an offence for a man of between 18 and 21 years to practice such acts (despite his being a legal adult) and this aspect of the law ought to be changed to remove the anomaly. This is, in some senses, a good example of how a simple change in the law can remove a considerable injustice that previously existed.

The change in the law has removed the feelings of guilt that surrounded many homosexuals and, by freeing people and allowing them to speak out about their feelings, it has helped break down the old discriminatory views of homosexuality. Many people have come to see that homosexuality is not an illness or a perversion, but a feeling that exists in a large number of ordinary people that they are attracted to their own sex rather than the opposite sex. Roughly one in twenty people is homosexual, to some extent or other; but this is not (as some have suggested) a suddenly escalating figure. Since it was formerly a criminal offence for the male half of the population, the actual number of practising homosexuals was never known, but this figure is now widely accepted.

(1) Should the law be concerned with what two people do in private, if it does not effect the rest of society?
(2) Are there other areas of private life which, like homosexuality, have been interfered with by the law? Do any injustices of this nature still remain today?
(3) What about the age of consent for heterosexual relations?

4 Reform of the Legal System

We have looked at the problems regarding the extent of the law - how much the law intrudes into our lives - and in particular at two very controversial areas (industrial relations and personal morality). Where reform of the law was needed it was reform of specific laws relating to specific fields. We now look at three areas where many are crying out for reform, three very general areas within the legal system. To start with, the problem of 'penal reform' (i.e. reform of the system of punishing offenders); secondly, the problem of reform in the legal profession; and finally, the general need to 'demystify' the law, to make it comprehensible to the non-lawyer.

1 Penal Reform

In July 1975 Mr. Roy Jenkins (then Home Secretary, the Cabinet Minister responsible for prisons) said that a prison population of 42,000 was the breaking point of the system. That figure has now been reached and in Parliament he then said that "there was no evidence that the unusually high prison population brought benefits in deterrence or the protection of society proportionate to the costs"[1]. It could be argued that although the proportion of offenders getting non-prison punishments is growing all the time, those sent to prison are there for too long. Many reformers would argue that in many cases a longer sentence does more harm than good.

Prisons aim in fact to rehabilitate offenders but, as the chairman of the leading body campaigning for penal reform explains, experience and research have shown ... "that no amount of resources can enhance a prisoner's chances of not offending again on his return to the community, when he has been confined in an institution too large to provide individual attention, too geographically remote to sustain the vital links with his family and the community, and too regimented to foster the self esteem necessary to make him a law-abiding citizen. His - and our - best hope that he will keep out of trouble lies in how he is received back into the community. In short, we have come to learn that prisons do not reform. And if they do not reform the prisoner, the quicker he comes out the more likely he is to lead a law abiding life"[2].

The start of a national penal policy is, Mr.Blom-Cooper says,

"the gradual dismantling of our outmoded prison system in favour of the eventual establishment of a few secure institutions, small enough to provide humane conditions for those to whom we cannot, for reasons of public safety, allow their liberty"[3].

1. Quoted by Louis Blom-Cooper QC, Chairman of the Howard League for Penal Reform, extract from article in "The Observer" April 18th 1976.

2 & 3 Mr. Blom-Cooper further extracts from "The Observer" April 18th, 1976.

That is, of course, only the start of a rational policy. It is quite easy to see the faults with the penal system, it is more difficult to see the solutions. There is the fundamental difficulty of trying to reconcile ultimately irreconcilable objectives (a) Protection of Society (b) Restitution for wrong done (c) Society's wish to punish, if not actually obtain "revenge" (d) Reformation of the offender so that he or she becomes a useful member of the community.

(1) If the prison population were to be substantially reduced what are the alternatives for those offenders freed?
(2) When crime is still increasing would many people accept such a change in punishment, or would there be some kind of revolt by the population at large?
(3) Why do people obey laws? Is it fear of punishment, a moral obligation, or something else? Would more crimes be committed, in the long-term, if prison sentences were greatly reduced?

Mr. Blom-Cooper suggests this long-term solution:-

"Crime is an intractable social problem to which no modern society has found an answer. But clearly the answers are to be found, if at all, in the kind of society we construct. It is no use saying that youngsters in our urban centres should be punished so that they learn to respect law and order. For most of us it pays handsomely to accept authority and not to break the law. But for some disadvantaged people there is little to be gained by obeying the law. In a society which is highly competitive, they are the losers. Until they begin to share the rewards, they are unlikely to behave in a socially acceptable manner.

Penal reformers are just as prone to proffer easy solutions as are the hardliners who want tougher measures. It goes without saying that there are no easy answers. But at least a realisation that imprisonment is the crudest, most costly and least successful of all existing penal instruments may start us all thinking about how else we could sensibly respond to crime. For too long we have used prisons as a social dustbin. A substantial reduction in the use of imprisonment would compel us to deal with these awkward nuisances in the community. Then, perhaps, we will begin to discover the real causes of criminal behaviour, and take action to deal with them"[4].

(1) What do you think of this suggestion?
(2) The people for whom "there is little to be gained by obeying the law":- What kind of changes in society do you think they would want? Is it just a question of finance or, if not, what other factors are involved?

4. Mr. Blom-Cooper in "The Observer" April 18th, 1976.

2 Reform of the Legal Profession

The legal profession has always suffered a great amount of criticism; but the criticisms and concerns about the profession became such that in February 1976 a Royal Commission was set up to look at the necessary changes "in the structure, organisation, training, regulation of, and entry to, the legal profession", including remuneration (both from private and public funds).

Before looking further at the problem we must see exactly what the legal profession is. Since the system in Scotland is different from that in England and Wales, we are talking about the profession in England and Wales only. It consists of Solicitors (about 26,000 of them) and barristers (about 3,500); the former being the lawyers in everyday contact with the public, to whom you go first about all legal problems, the latter in contrast can only be seen through the former.

Solicitors deal with the making of Wills, administering the Estates of deceased clients, formation and operation of Trusts, buying and selling of property, landlord/tenant disputes, formation and dissolution of companies and partnerships, and some litigation (i.e. court work - both criminal and civil). Barristers are specialists in litigation called on by solicitors to act for their clients in particularly difficult cases, or in certain higher courts where only barristers can act. Most (formerly all) Judges are selected from practising barristers - a few from practising solicitors.

Is the legal profession today providing an adequate service to the public? This question can be taken in three parts - (i) What areas of work are being covered by the profession? (ii) What is the quality of that work? and (iii) What is the cost to the client (and the taxpayer)? These three questions are at the heart of most of the suggested reforms of the legal profession.

Conveyancing (the buying and selling of property) is at present covered by a solicitors' monopoly, laid down by an Act of Parliament. Although anyone can arrange the sale or purchase of their own home, only solicitors can charge for such a service. Many argue that they charge too much, that there is a large amount of basic work which does not need the specialist knowledge of a qualified solicitor; and thus if some other less qualified people were given the chance, they could provide the service at a lower cost. The more complicated work could be left to solicitors, but even in straightforward cases, serious problems can arise.

A large amount of the conveyancing work done at the moment is actually carried out by staff working for firms of solicitors; but these staff are responsible to, and whenever needed can always turn

to, the qualified person. This situation will be looked at by the Royal Commission, and it will - quite rightly - be looked at within the whole picture of the legal profession (including what work it does and how much it is paid for that work). Some solicitors argue that only by charging the fees they do, for conveyancing work, can they take on less profitable work (which may be socially valuable). Even if this is true, is such an arrangement satisfactory? The existence of the Law Society Compensation Fund to which all Solicitors contribute, and Compulsory Professional Indemnity Insurance does protect the public against fraud and negligence.

Advocacy (the representation of one of the parties in criminal or civil proceedings) is also monopolised by lawyers. You can defend yourself in court, but only a solicitor, or in the higher court, a barrister, can present your case for you. This situation has been more widely criticised lately, partly because of the significant decline in the general standards of advocacy, with barristers increasingly coming to court unprepared, sometimes having only seen their client on the morning of the case. Also many think that "resort to the courts is a costly lottery, providing great intellectual stimulus and enjoyment to practitioners of the law, but with the unfortunate litigants often feeling trapped in an uncontrollable machine"5.

5. "The Observer", leading article, 15th February, 1976.

The problems seen here inevitably involve the question of the division of the legal profession into solicitors and barristers. The profession itself is very divided on this issue - some would like to see a merger of the two parts of the profession for the sake of a cheaper and more efficient service to the public; the majority say a merger would create more problems than it solved, and the system should be retained in its present form. The system is certainly peculiar to this country, most other industrial democracies having no such division, but it might be very difficult to reorganise it (though that is not in itself a reason for maintaining the present structure).

All cases before the Courts in the United Kingdom are based on the Adversary system - two sides fighting it out before a neutral umpire - as contrasted with the Inquisitorial system on the Continent, with emphasis on the presiding Judge investigating to discover the true position. Neither system is fully satisfactory.

New Areas to work in?

If, then, there are some areas where the lawyers' monopoly is being questioned, are there also areas where lawyers ought to be working more? The answer is certainly yes. It was once said that "law is a system devised by the property classes to protect their property and their privilege". This view is supported by the large amount of time lawyers have traditionally spent dealing with property (e.g. administration of estates, conveyancing) and the relatively small amount of time they have spent on work for the poorer sections of the community. Lawyers are, in general, not so good on welfare rights as they are on property rights. As "The Observer" said in February 1976:-

"Britain has at present a legal system which often looks as anachronistic as its wigs and gowns: a system in which solicitors are plentiful in well-to-do areas, and inaccessible in less fashionable districts; in which the law appears suited only to the property rights of the middle class, but oblivious of the new problems of poorer and less well-educated people, who need help with their broken marriages, or their landlord-and-tenant disputes. Sooner, rather than later, the legal profession must be made to appear less like a bastion of privilege, more like a defender of us all"[6].

(1) What advantages and disadvantages do you think there are in having solicitors and barristers operating separately?
(2) What problems do you see in trying to merge the two together?

6. "The Observer", leading article, 15th February, 1976.

Finance of Legal Services

The key to the whole problem is money. Lawyers are highly qualified people who have the necessary training to deal with some of life's more complicated problems. (In matrimonial problems lawyers have no professional training in counselling and reconciliation of the parties.) To provide a reasonable standard of living in return for the work done and responsibility taken they have to charge fees which will clearly be beyond the reach of a certain section of the population. Until 1949, there was virtually no state subsidy for legal advice, such that lawyers dealt almost exclusively with the problems of those who could afford to pay their fees or gave their services free to "Poor Persons".

The examples of potential injustice are plentiful. The poor man who is accused of a serious crime will find himself up against some of the finest barristers, representing The Crown (most criminal proceedings are brought in the name of The Queen). He is seriously disadvantaged if he defends himself, likewise also the poor tenant being taken to court by his landlord - where the landlord is a large and powerful property company. The rich couple who want a divorce will employ a solicitor to sort the matter out quickly; whereas the poor couple carry on their miserable life, because they cannot afford legal advice on their marriage. The wealthy man can employ a Solicitor, with a specialist knowledge of tax law, to sort out his Income Tax, Capital Gains Tax, Gift Tax etc. etc; whereas the man of lesser means who cannot afford such advice may end up paying more tax than he need do. In many circumstances in life, legal advice will be helpful, with varying degrees of necessity; but whereas the man of wealth can simply consult his solicitor whenever the need arises, the path is not so easy for the poorer members of our society.

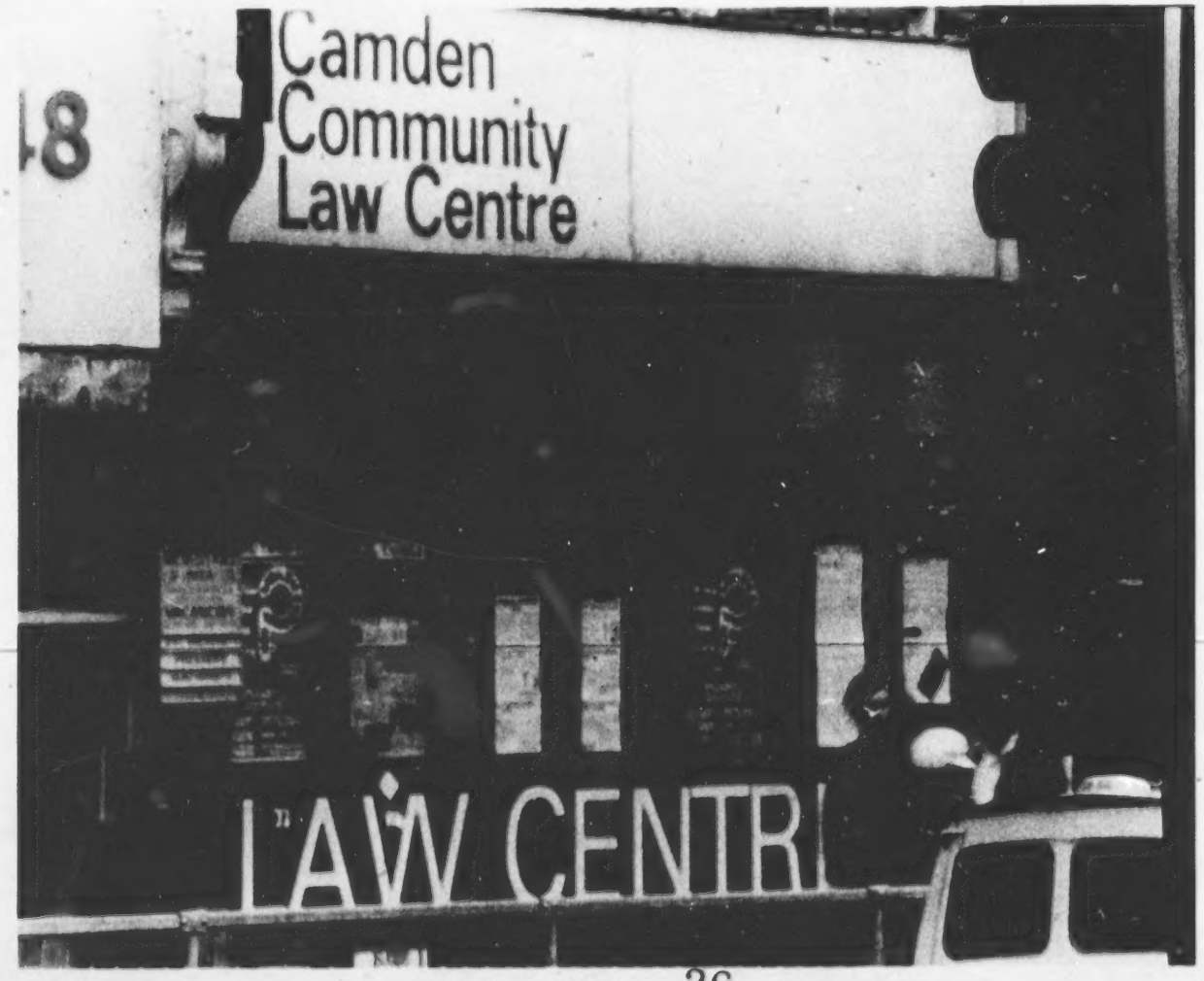
(1) What other examples of similarly unjust situations can you see?
(2) Some people argue that providing free medical services is right, since you do not usually cause your own illness; whereas free legal services would be wrong, since most legal problems are due to the individual's own fault. Do you agree?
(3) Should there be a national legal service? How would the independence of the legal profession be affected? If all lawyers were paid by the Government, how could they properly handle cases against the Government? There have been problems already with some Law Centres substantially financed by Local Authorities, where the Law Centre has had to take cases against the Local Authority concerned.

The need for free legal advice is therefore very great and in two ways there has been some important progress since the war. Firstly, the Legal Aid and Advice Act 1949 introduced the Legal Aid Scheme whereby you go to a Solicitor (any who is a part of the scheme),

obtain his services, and apply for financial assistance in paying his fees. Then according to the financial background of the applicant, all, part, or none of the fees are paid from central government funds. So, in effect, you receive the same services as ordinary clients but the money comes from a different source.

This covers non-criminal cases, but there are still many situations not covered by this scheme. Those faced with criminal charges without the means to pay for legal representation, can be granted legal aid by the Courts.

Secondly, in the last ten years or so, a number of law centres have been set up, financed either by local and central government grants, or by private charities. There has also been a growing use of local authority and other offices as part-time centres for legal advice given voluntarily by solicitors. In these cases the advice is given in situations quite remote from the solicitor's office, which is itself an inhibiting factor to many.



Despite these developments, in the post-war years, the system is still far from satisfactory, as "The Times" put it in January 1976:-

"Access to legal services by the poor and in the deprived areas continues to be a problem. The existing unstructured and uneasy co-existence between neighbourhood law centres, solicitors' firms, and various voluntary and official legal advice agencies provides only erratic and inconsistent help to that section of the community which often needs it most."[7]

(1) Which system of providing legal advice, do you think, should be developed further in future - legal aid, law centres, a mixture of the two, or some other system?
(2) Whichever system is used more money must come from the taxpayer; what areas of public expenditure would you cut as a result? or would you not make legal advice an expenditure priority?

The solicitors' monopoly of conveyancing, the lawyers' monopoly of advocacy, the division of the legal profession, into two parts, the traditional strengths and weaknesses of practising solicitors, the fees charged by lawyers in general, the development of Legal Aid and Law Centres, all these areas of the legal system will continue to come under close scrutiny with much discussion about radical changes. Changing a long-established system is not an easy task, and it will certainly take time; but with certain impetus to change from the Royal Commission, the legal profession could progress towards being "the defender of us all".

7. "The Times", leading article, January 26th 1976.

3 'Demystifying' the Law

We have seen that a large amount of reform is needed in the legal system, as well as in particular laws, and we have seen that it will take time for such reforms to bring the system "up-to-date".

Earlier on we saw that the laws of the country are not conveniently parcelled into an easily understandable system. The Law Commission which is looking continuously at possible reforms of various laws, is undertaking a much needed codification of specific areas of the Law. The complicated lay-out of our laws, together with the highly technical nature of the laws themselves, only create an even greater rift between the law/lawmakers and the general public for whom the laws are designed. In short, besides a reform of the legal system, there is a need to "demystify" the law. To quote Mr. Andrew Shonfield:-[8]

" ... We can't afford to dispense with a much more active use of the law as an instrument for resolving social conflict. But, in order to do that, we must demystify the law, and get rid of its pomposity and apparent lack of common sense. British law, it has been said, is 'lawyers' law', highly technical and designed for experts in a specialised and remote language - while what we need now and I think need badly, is a fully comprehensive people's law".

Much of the difficulty does however arise with the law produced by Parliamentary draughtsmen in Acts of Parliament, and that found in statutory instruments produced by civil servants under authority of Act of Parliament; whether by good luck or otherwise (!) there is a good deal of commonsense in the law as it is.

8. Mr. Andrew Shonfield, Director of Royal Institute of International Affairs, from talk on Radio 3, published in "The Listener" March 25th 1976.

For Further Study

BOOKS

"Law, Justice and Politics" - Gavin Drewry (Longman 1975)

"The Consumer, Society and the Law" - Gordon Borne & Audrey L. Diamond (Pelican 1977)

"Freedom, the Individual and the Law" - Harry Street (Pelican 3rd Ed 1972)

"Civil Liberties in Britain" - Barry Cox (Penguin 1975)

"NCCL Guide to Civil Liberties" (Penguin)

"Legal Rights" - Henry Hodge (Arrow 1974)

"What's Wrong with the Law?" - ed. by Michael Zander (BBC 1970)

"The English Legal System" - Central Office of Information (Reference Pamphlet No. 49) (HMSO 1972)

"The Law Courts" - Joan Llewelyn Owens (Dents 1976)

"The Courts and You" - Michael J. Cook (The Law Society with Oyez Publishing)

"The Police and the Law" - Charles Wegg-Prosser (The Law Society with Oyez Publishing)

"Before you see a Solicitor" - Gerald Sanctuary (The Law Society with Oyez Publishing)

"The Work of a Magistrate" - Brian Fraser Harrison & Alan J. Maddox (Shaws 1975)

"Sweet and Maxwell's Guide to a Career in the Law" (Sweet & Maxwell)

USEFUL ADDRESSES

The Law Society (the controlling body for Solicitors)
113, Chancery Lane,
London, WC2A 1PL
to whom enquiries about becoming a Solicitor should be sent.

The Council of Legal Education
4, Gray's Inn Place,
London WC1R 5DR
to whom enquiries about becoming a Barrister should be sent.

The College of Law,
Braboeuf Manor, St. Catherines,
Guildford, GU3 1HA